

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-009229

06/17/2015

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
M. Corriveau
Deputy

HERITAGE VILLAGE I I HOMEOWNERS
ASSOCIATION

SHELTON L FREEMAN

v.

RICHARD WEINBERG, et al.

J ROGER WOOD

MINUTE ENTRY

The Court received and considered the briefing submitted on Plaintiff Heritage Village II Homeowners' Association [Plaintiff] Application For Attorney Fees and Costs. The parties have not requested oral argument. The Court also finds that the parties' briefing is comprehensive and sufficient, and that oral argument would not add to the Court's consideration of the issues presented. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. rule 7.1[c][2] to expedite the business of the Court. The Court issues the following ruling.

General Background. Briefly stated, this action was initiated by Plaintiff seeking enforcement of the homeowners' association and the master association's rules and regulations. The Court on January 16, 2015 ruled in Plaintiff's favor granting declaratory relief against Defendants and finding that Defendants violated provisions and requirements of applicable homeowners' rules and regulations. The Court ruled that Plaintiff was entitled to the recovery from Defendants of its reasonable attorneys' fees and court costs. Thereafter, pursuant to the terms of the Court's ruling and Ariz. R. Civ. P. rule 54[g] Plaintiff filed its Application For Fees and Costs.

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The Plaintiff was represented in this action by multiple law firms. However, this motion is focused on the costs and fees incurred by the firm of Freeman Huber Law, PLLC. Plaintiff's law firm had approximately 4 to 6 of its attorneys and/or paralegal personnel assigned to this matter. Each of these legal personnel separately billed time to this action. Plaintiff seeks recovery of attorneys' fees totaling \$171,863.89 and costs totaling \$8,808.47.

Defendants argue that the attorneys' fees requested are excessive and not reasonable and therefore should be denied. Alternatively, if granted, Defendants request that the award of attorneys' fees should be substantially reduced. Briefly stated, Defendants allege that the cumulative sums requested for fees are grossly excessive; and further that there existed much duplication of legal services in this matter.

Standard of Review. A party requesting attorneys' fees must initially establish that it is entitled to an award and further that the attorneys' fees sought are reasonable.¹ In considering an award of fees, consideration must be given to a number of factors that favor an award.² Those factors include [1] the merits of the claim or defense presented by the unsuccessful party; [2] whether the litigation could have been avoided or settled; [3] whether assessing fees against the unsuccessful party would cause an extreme hardship; [4] whether the successful party prevailed with respect to all the relief sought; [5] whether the legal issue presented was novel; and [6] whether an award would discourage other parties with tenable claims or defenses from litigating them.³ None of these individual factors are determinative of whether attorneys' fees should be awarded, the Court will consider all of the applicable factors in exercising its discretion.⁴ The purpose of awarding reasonable attorneys' fees is principally to mitigate the burden of litigation and the sums awarded need not "equal or relate to the attorney fees actually paid."⁵

Discussion. As stated, the Court finds that Plaintiffs are entitled to an award of reasonable attorney fees. Having considered the factors set forth in *Associated Indemnity Corp. v. Warner*, the Court finds that those factors mitigate in favor of awarding reasonable attorneys' fees to this Plaintiff. Briefly stated, the Court having considered the totality of these circumstances finds, as follows:

- As for the merits of the claim presented by Plaintiff- the Court notes that Plaintiff prevailed with respect to all substantive relief requested.
- Avoidance of the claim- this action was initiated by Plaintiff after Defendants refused to cease and desist with on-going construction in violations of the homeowners' association CC&R's.

¹ Ariz. R. Civ. P. rule 54[g]; *State ex rel. Goddard v. Gravano*, 210 Ariz. 101 [App. 2005].

² *Associated Indem. Corp. v. Warner*, 143 Ariz. 567 [1985].

³ *Id.*

⁴ *Wilcox v. Waldman*, 154 Ariz. 532 [App. 1987].

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- Whether imposing fees would cause extreme hardship- Defendants argues that an award of reasonable fees would cause financial hardship. Further, compliance with this Court's order will impose a financial hardship upon Defendants; and
- An award of reasonable fees would not have a chilling effect of future claims.

However, the Court finds that the cumulative amount of attorneys' fees requested are excessive and further that there exists duplication of legal services provided. Attorneys' fees must bear a direct relationship to the nature of the legal dispute and the quality, kind and extend of services reasonably rendered in such matters. The amount of time expended on the claim must be reasonable. It is clear, that this Plaintiff was willing to hire a law firm that assigned multiple attorneys to this matter. However, whether the actual attorneys' fees incurred are to be passed on or shifted to this non-prevailing party remains an important issue. The discretion to award attorney fees itself imposes an important constraint. That is, that any attorneys' fees awarded must be "reasonable" under the circumstances.

Under these circumstances, the Court finds [a] that Plaintiff's firm overstaffed this claim; [b] that the work performed was unnecessarily duplicated and [c] further that the cumulative amount of time expended by all legal personnel on this matter was excessive. Under these circumstances, this Court will not shift to this non-prevailing party, attorney fees that are not reasonable. The Court finding duplication and excessive time expended does herein exercises its discretion by reducing the amount of fees requested. The Court awards Plaintiff sixty five percent [65%] of the gross fees requested and finds, given the totality of these circumstances and nature of these proceedings, that those sums eliminate much of the excess time and duplication of legal services. The Court finds that such reduced sums are "reasonable".

The sums awarded will provide this Plaintiff with attorneys' fees of \$111,711.53 for claims resolved pursuant to a multiple day evidentiary hearing.

Costs. As for costs, the Court concurs with Defendants that the sums expended for expert services on May 30, 2014 and September 30, 2014 are not taxable costs. Defendants have offered no objection to the balance of the costs incurred and therefore, the Court will grant costs totaling \$3,932.22 to Plaintiffs.

For the reasons herein stated,

IT IS ORDERED awarding Plaintiff reasonable attorney fees against Defendants totaling \$111,711.53;

IT IS FURTHER ORDERED awarding Plaintiff taxable costs totaling \$3,932.22.